



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with an application by the tenant seeking an order returning double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to the return of double the security deposit?

### Background and Evidence

The tenancy began on or about December 1, 2011 and ended on August 14, 2012. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00.

The tenant gave the following testimony; a move in condition inspection report was conducted at the outset of the tenancy, received a new job in late July 2012, contacted the landlord and inquired how much notice he required; he indicated two weeks was sufficient and that she could do whatever was necessary to accommodate her new position, the landlord gave only one opportunity to do a move out condition inspection report, denies ever giving her consent for the landlord to do the inspection without her being present, feels she is entitled to double the deposit as the landlord did not give two "proper opportunities" as required by the Act, nor did he return the deposit within fifteen days of receiving her forwarding address in writing, gave her forwarding address in writing by registered mail on September 12, 2012.

The landlord gave the following testimony; the tenant did not provide the pet deposit as was agreed upon at the outset of the tenancy but he did not realize it till after she moved out, the tenant was notified by e-mail to attend for a condition inspection report on several occasions, was given verbal consent on the phone by the tenant to conduct the inspection without her, the landlord incurred costs to clean and repair the suite as the tenant did not leave it a reasonable manner, feels he should be entitled to retain the deposit to cover his costs.

### Analysis

The landlord's position is that he gave the tenant several opportunities to be present at the move out condition inspection. Section 17 of The Residential Tenancy Rules and Regulations clearly addresses this as follows;

#### **Two opportunities for inspection**

**17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a **notice in the approved form.**

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The landlord was also of the position that since the tenant left the place dirty and with some minor damage he was entitled to retain the deposit to cover his costs. I asked the landlord whether he was aware that he required an order from the Residential Tenancy Branch to retain the security deposit, he responded “no I didn’t”.

Section 38 of the Residential Tenancy Act addresses it as follows;

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

As the landlord did not offer two opportunities for inspection as outlined in the Residential Tenancy Rules and Regulations, nor did he file for dispute resolution or return the deposit to the tenant within fifteen days after receiving the tenant’s forwarding address in writing as is required by the Act, I find that the tenant is entitled to the return of double the security deposit. The landlord made references to the tenant breaching

their tenancy agreement on several issues. The landlord did not file an application for dispute resolution in regards to those issues. The tenant is the sole applicant for today's hearing and only the issue applied for has been addressed in this decision. Although the issue of the security deposit has been dealt with, the landlord is at liberty to apply for a separate hearing to seek compensation or remedy for any outstanding issues that he and the tenant are unable to work out. This point was made very clear to both parties during the hearing that this decision is in relation to the security deposit only.

As for the monetary order, I find that the tenant has established a claim for \$1100.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant an order under section 67 for the balance due of \$1150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The tenant is entitled to a monetary order for \$1150.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 08, 2013.

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Residential Tenancy Branch

